

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK



FILED

SEP 26 2005

UNITED STATES OF AMERICA

-v-

ALBERT MOORE, JR.

Defendant.

CLERK, US DISTRICT COURT, WDNY
CELEBRATING 100 YEARS OF SERVICE
TO WESTERN NEW YORK
05-CR-1900-2000

05 CR 2578

PLEA AGREEMENT

The defendant, ALBERT MOORE, JR. and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and to plead guilty to a 1 count Information charging a violation of Title 29, United States Code, Section 501(c) (Embezzlement from a Labor Union by an officer or employee), which carries a maximum possible sentence of a term of imprisonment of 5 years, a fine of \$10,000, or both, a mandatory \$100 special assessment and a term of supervised release of up to 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that the Court may require restitution in the amount of \$36,326.92, less restitution already paid, to be paid to PACE, LU #1-6992 as part of the sentence, pursuant to Sentencing Guidelines § 5E1.1 and Title 18, United States Code, Section 3663.

3. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in paragraph 1 of this agreement.

II. SENTENCING GUIDELINES

4. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

ELEMENTS OF THE CRIME

5. The defendant understands the nature of the offense set forth in paragraph 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

- a. That the defendant was an officer or employee of a labor organization;
- b. That the funds taken were those which belonged to the labor organization;
- c. That the defendant did unlawfully embezzle, steal or unlawfully and willfully convert labor organization funds.

FACTUAL BASIS

6. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

From April, 1999 until April 2002, the defendant, Albert Moore, served as the Financial Secretary/Treasurer of the Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE), Local # 1-6992, in Buffalo, New York. In that position, he was responsible for handling the disbursement of union funds for various labor union expenses. He also was responsible for reconciling the union bank account, which was maintained at M&T Bank. The primary source of the union funds was dues from the local union members.

Beginning no later than January, 2000, Moore began to embezzle funds from the union bank account, using a number of methods to get access to those funds and avoid detection.

One method Moore used to embezzle funds was to simply write checks to himself for money to which he was not entitled. Although union policy required two signatures on a check, he was able to hide his embezzlement from the union leadership by writing a check for a legitimate purpose, and after the required signatures were obtained, he simply changed the payee.

Additionally, as part of regular financial reports, he submitted copies (never the original) of the check ledger which falsely showed a legitimate payee, not the ultimate payee. For example, in August, 2001, Moore submitted to union leadership a financial report and a copy of the ledger, showing check 4367 paid to PACE for \$1,396.00 and check 4368 paid to PACE for \$1,600.00. Those checks, however, were, in fact, payable to Al Moore. The check ledger was changed (after the financial report was submitted) to reflect Al Moore as the payee, purportedly for reimbursement of office and administrative expenses.

In September, 2001, Moore submitted a financial report to the union leadership, with the report ending with check #4411. There was no entry for check # 4412. Check 4412 was in the amount of \$1,800 and was payable to Al Moore. The current ledger for September 2001 shows a check payable to Moore for \$1800 as reimbursement for administrative and office expenses.

In October, 2001, Moore submitted a financial report to the union leadership, with the attached ledger showing check 4412 as its first entry, with a notation that it was payable to Ralph G (the union accountant). The true copy of the ledger has that first entry entirely blacked out.

In total, during the time period between January 2000 and May 2002, Moore took \$36,326.92 of union funds to which he was not entitled. In late 2002, after the union had discovered the fact of the embezzlement, but not the scope, Moore agreed to pay to the union the total of \$15,000.

BASE OFFENSE LEVEL

7. The government and the defendant agree that Guidelines § 2B1.1 (Nov. 2001 manual) applies to the offense of conviction and provides for a base offense level of 6.

SPECIFIC OFFENSE CHARACTERISTICS

8. The government and the defendant agree that U.S.S.G. § 2B1.1(b)(1)(D) applies since the loss exceeds \$30,000 (\$36,326.92) and increases the offense level to 12.

9. The government and the defendant agree that the 2 level upward adjustment of Guidelines § 3B1.3 (abuse of trust/special skill) applies and results in an offense level of 14.

10. The defendant specifically reserves his right to make a downward departure motion under Guidelines § 5K2.0(a)(4) based upon his family circumstances. The Government reserves the right to oppose that departure.

ADJUSTED OFFENSE LEVEL

11. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 14.

ACCEPTANCE OF RESPONSIBILITY

12. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility), which would result in a total offense level of 12.

[REDACTED]

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

14. It is the understanding of the government and the defendant that, with a total offense level of 12 and criminal history category of I, the defendant's sentencing range would be a term of imprisonment of 10 to 16 months, a fine of \$3,000 to \$10,000, and a period of supervised release of 2 to 3 years. Notwithstanding this, the defendant understands that at sentencing

the defendant is subject to the maximum penalties set forth in paragraph 1 of this agreement.

15. a) The government and the defendant agree to the Sentencing Guidelines calculations set forth in this agreement and neither party will advocate or recommend the application of any other Guideline, or move for any guideline departure pursuant to Chapter 5K of the Sentencing Guidelines, except as specifically set forth in this agreement. A breach of this paragraph by one party will relieve the other party of any agreements made in this plea agreement with respect to sentencing motions and recommendations.

b) Both parties, however, reserve the right to seek a non-Guidelines sentence and to bring to the attention of the Court all information deemed relevant to a determination of the proper sentence in this action.

III. STATUTE OF LIMITATIONS

16. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees not to assert the statute of limitations as a defense to any criminal offense involving or related to the embezzlement of funds from the PACE LU #1699 from

2000 to 2002, which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

IV. GOVERNMENT RIGHTS AND RESERVATIONS

17. The defendant understands that the government has reserved the right to:

a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;

b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;

c. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendation or factor;

d. advocate for a specific sentence, including the amount of restitution and/or fine and the method of payment.

18. The defendant agrees that any financial records and information provided by the defendant to the Probation Office,

before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

**Waiver of Right to Post Conviction
DNA Testing of Physical Evidence**

19. The defendant fully understands that, to the extent that the government has or may have any items of physical evidence in this case that could be subjected to DNA testing pursuant to 18 U.S.C. § 3600, the defendant has the right to file a motion with the Court to have such items tested for DNA in an attempt to prove that the defendant is actually innocent of the crime to which the guilty plea has been entered in this case. The defendant has discussed this right with defense counsel, and the defendant knowingly and voluntarily waives the right to make such a motion and to have such DNA testing performed on any such items the government may have or may obtain in the future. The defendant fully understands that because the defendant is waiving these rights, any physical evidence that may exist or be found to exist in this case will likely be destroyed or will otherwise be unavailable for DNA testing in the future.

V. APPEAL RIGHTS

20. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal, modify pursuant to Title 18, United States Code, Section 3582(c)(2) and collaterally attack any sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, above, notwithstanding the fact that the Court may reach the sentence by a Guidelines analysis different from that set forth in this agreement. The defendant further agrees not to appeal a restitution order which does not exceed the amount set forth in Section I of this agreement.

21. The government waives its right to appeal any sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, above, notwithstanding the fact that the Court may reach the sentence by a Guidelines analysis different from that set forth in this agreement. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence. Further, the government otherwise reserves

all of its rights of appeal as provided for in the Sentencing Reform Act of 1984.

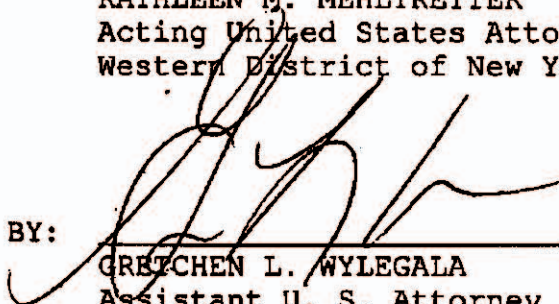
22. Defendant waives and agrees not to assert in any civil lawsuit arising from the conduct which gave rise to the criminal charges that are the subject of this plea any defense based on the double jeopardy or excessive fines clauses of the Constitution.

VI. TOTAL AGREEMENT AND AFFIRMATIONS

23. This plea agreement represents the total agreement between the defendant, ALBERT MOORE, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

KATHLEEN M. MEHLTRETTER
Acting United States Attorney
Western District of New York

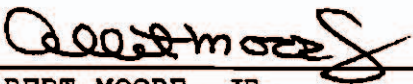
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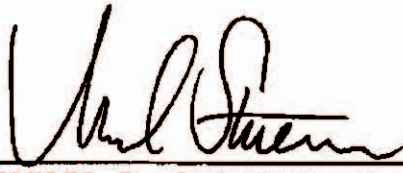
GRETCHEN L. WYLEGALA
Assistant U. S. Attorney

Dated: *September 26, 2005*

I have read this agreement, which consists of 12 pages. I have had a full opportunity to discuss this agreement with my attorney, Michael P. Stuermer, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.


ALBERT MOORE, JR.
Defendant

Dated: 9.26.05


MICHAEL P. STUERMER, Esq.
Attorney for the Defendant

Dated: 9.26.05